

# CRAVATH, SWAINE & MOORE

RECORDATION NO. 15087-B

Filed & Recorded

ONE CHASE MANHATTAN PLAZA

OCT 28 1985 3-0 5 PM

TELEPHONE 212 422-3000

TELEX  
RCA 233663  
WUD 125547  
WUI 620976  
TRT 177149

CABLE ADDRESSES  
CRAVATH, N. Y.  
RECORDATION NO. 15087-A  
2 HONEY LANE, CHEAPSIDE  
LONDON EC2V 8BT, ENGLAND  
TELEPHONE: 1-606-1421  
TELEX: 5814901  
RPIFAX/INFOTEC:  
1-606-1425

ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE

ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN J. HIEGEL  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN  
STUART W. GOZD  
JOHN W. WHITE  
JOHN E. BEERBOWER  
EVAN R. CAMERON  
PATRICIA GEOGHEGAN  
D. COLLIER KIRKHAM  
MICHAEL L. SCHLER  
DANIEL P. CUNNINGHAM  
KRIS F. HEINZELMAN  
B. ROBBINS KIESSLING  
ROGER D. TURNER  
PHILIP A. GELSTON  
RORY O. MILLSON  
NEIL P. WESTREICH  
FRANCIS P. BARRON  
RICHARD W. CLARY  
WILLIAM P. ROBERTS  
JAMES D. COOPER

NEW YORK, N. Y. 10005

RECORDATION NO. 15087-C  
Filed & Recorded

OCT 28 1985 3-0 5 PM

6-301A

No.

OCT 28 1986

Date .....

OCT 28 1985 3-0 5 PM

Fee \$ 40.00 INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

RECORDATION NO. 15087-C  
Filed & Recorded

OCT 28 1985 3-0 5 PM

October 27, 1986

INTERSTATE COMMERCE COMMISSION

Burlington Northern Railroad Company

Electrical Power Purchase Financing

9-3/8% Conditional Sale Indebtedness

Due December 31, 2000

RECORDATION NO. 15087

Filed & Recorded

OCT 28 1985 3-0 5 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 15087-E  
Filed & Recorded  
OCT 28 1985 3-0 5 PM

INTERSTATE COMMERCE COMMISSION  
Dear Ms. McGee:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Oakway, Inc., for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of October 15, 1986, between The Connecticut National Bank, as Trustee, and General Motors Corporation (Electro-Motive Division), as Builder; and

(b) Agreement and Assignment dated as of October 15, 1986, between General Motors Corporation (Electro-Motive Division), as Builder, and The Connecticut Bank and Trust Company, National Association, as Agent.

2. (a) Lease of Railroad Equipment dated as of October 15, 1986, between Oakway, Inc., as Lessee, and The Connecticut National Bank, as Trustee; and

(b) Assignment of Lease and Agreement dated as of October 15, 1986, between The Connecticut National Bank, as Trustee, and The Connecticut Bank and Trust Company, National Association, as Agent.

See next page for:

- D

- E

*Cravath Swaine & Moore*  
*(Counterpart)*

OCT 28 2 53 PM '86

-D 3. Bailment Agreement dated as of October 15, 1986, between Oakway, Inc., as Bailor, and Burlington Northern Railroad Company, as Bailee.

-E 4. Assignment of Power Purchase Agreement dated as of October 15, 1986, among Oakway, Inc., as Oakway, The Connecticut Bank and Trust Company, National Association, as Agent, and The Connecticut National Bank, as Trustee.

The names and address of the parties to the aforementioned agreements are as follows:

1. Agent:

The Connecticut Bank and Trust Company,  
National Association  
One Constitution Plaza  
Hartford, Connecticut 06115

2. Trustee-Lessor:

The Connecticut National Bank  
777 Main Street  
Hartford, Connecticut 06115

3. Builder-Vendor:

General Motors Corporation  
(Electro-Motive Division)  
LaGrange, Illinois 60525

4. Lessee-Bailor-Oakway:

Oakway, Inc.  
45 Cardinal Drive  
Westfield, New Jersey 07092

5. Bailee:

Burlington Northern Railroad Company  
9401 Indian Creek Parkway  
Overland Park, Kansas 66210-9136

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Trustee-Lessor, the Builder-Vendor, the Lessee-Bailor-Oakway and the Bailee.

The equipment covered by the aforementioned documents is listed on Exhibit A attached hereto. The equipment bears the legend "Leased to Oakway, Inc. Subject to a Security Agreement Filed with The Interstate Commerce Commission".

There is also enclosed a check for \$40 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document), the Bailment Agreement and the Assignment of Power Purchase Agreement.

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich

Noreta R. McGee, Secretary,  
Interstate Commerce Commission,  
Washington D.C. 20423

Encls.

## APPENDIX A TO LEASE

Type	Builder	Builder's Specifi- cations	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Estimated* Unit Base Price	Estimated* Total Base Price	Estimated Time and Place of Delivery
3,800 h.p. Model SD-60 diesel- electric locomotive	EMD	GM Loco- motive Specifica- tion 8128, Amendment 8128-3 as supplemen- ted by Final Specifica- tion Supplement dated 10/15/86	La Grange, Illinois	100	OWY 9000-9099	\$1,282,977.16	\$128,297,716	October 1986, through January 1987, at Clyde, Illinois
						For deliveries on or before 12/31/86		
						For deliveries after 12/31/86		
						\$1,170,749.14	\$117,074,914	

\* Includes prepaid freight and switching charges to Clyde, Illinois, estimated at \$250 per Unit.

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/29/86

Laurance V. Goodrich  
Cravath, Swaine & Moore  
One Chase Manhattan plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/28/86 at 3:05pm, and assigned re-recording number(s). 15087, 15087-A, 15087-B - 15087-C, 15087-D, 15087-E

Sincerely yours,

*Norata R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

OCT 28 1986 3-0 5 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 15, 1986 ("Assignment"), by and between THE CONNECTICUT NATIONAL BANK, acting not in its individual capacity but solely in its capacity as Trustee ("Lessor") under a Trust Agreement ("Trust Agreement") dated as of the date hereof with CHEMICAL BANK, a New York banking corporation ("Owner"), and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, as Agent ("Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder"), providing for the sale to the Lessor of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and Oakway, Inc. ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Lessor to the Lessee of the Units;

WHEREAS the Builder has assigned to the Vendor its rights in, to and under the CSA pursuant to an Assignment and Agreement dated as of the date hereof; and

WHEREAS in order to provide security to the Vendor for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in paragraph 4.3(b) of the CSA), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers,

privileges and other benefits under the Lease (including those inuring to the benefit of the Owner), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys, other than the Excluded Indemnity defined below, being hereinafter called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that, notwithstanding the foregoing, the Lessor and the Owner shall be entitled to receive directly any indemnification or insurance proceeds provided for the Lessor and the Owner under §§ 6, 7.6(1)(ii) and 12 of the Lease, which indemnification and insurance proceeds are excluded from this Assignment ("Excluded Indemnity") provided that the Vendor and the Investors are not barred from receiving comparable indemnification and insurance proceeds to which they may be entitled under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Lessor by bank wire to the Owner at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner. If the Vendor shall not receive any rental payment under § 3 of the Lease or Casualty Value payment under § 7.1 of the Lease when due, the Vendor shall notify the Lessor and the Owner by telephone, confirmed in writing, at its address set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Lessor and the Owner shall not

affect the obligations of the Lessor hereunder or under the CSA, except that the Vendor may not make a Declaration of Default (as defined in paragraph 16.1 of the CSA) based solely on an event of default under subparagraph (a) of said paragraph 16.1 arising solely by reason of the failure of the Lessee to make any such rental or Casualty Value payment which would not constitute an event of default under subparagraph (f) of said Paragraph 16.1 if the Lessor complies with the provisions thereof, unless such event of default is not remedied within five days after notification is given as aforesaid.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claim or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.



5. Upon the full discharge and satisfaction of all sums and other obligations due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums and other obligations due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and Section 86 of the Railway Act of Canada, such additional rights, if any, arising out of the filing, recording or deposit hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the

Lessor may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor may, whether or not an event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise and enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease in respect of the Excluded Indemnity; provided further, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease or take any action which would cause any termination of the Lease.

11. Anything herein to the contrary notwithstanding, each and all of the representations and agreements in this Assignment made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations and agreements by said financial institution in its individual capacity, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution, on account of any representation or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

This Assignment shall be effective upon delivery of fully executed counterparts hereof to Cravath, Swaine & Moore, at their offices in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT NATIONAL BANK,  
as Trustee as aforesaid,

by

  
Authorized Officer

[Seal]

Attest:

  
Authorized Officer

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Agent,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

This Assignment shall be effective upon delivery of fully executed counterparts hereof to Cravath, Swaine & Moore, at their offices in New York, New York.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT NATIONAL BANK,  
as Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

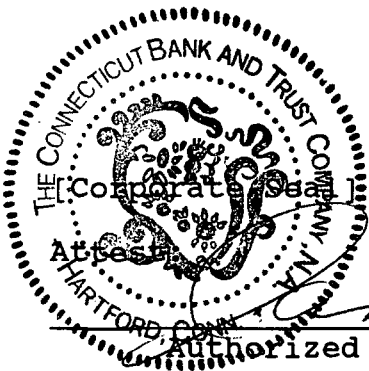
Attest:

\_\_\_\_\_  
Authorized Officer

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Agent,

by

  
\_\_\_\_\_  
Authorized Officer



\_\_\_\_\_  
Authorized Officer

On this 24<sup>th</sup> day of October 1986, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, <sup>W. R. MUNROE</sup> says that he is an Authorized Officer of THE CONNECTICUT NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

My Commission expires **SUSAN C. CHADBOURNE**  
**NOTARY PUBLIC**  
**MY COMMISSION EXPIRES MARCH 31, 1990**

On this day of October 1986, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, days that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this        day of October 1986, before me personally appeared        to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this 24th day of October 1986, before me personally appeared Mason M. Lemont , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Ruth A. Smith  
Notary Public

[Notarial Seal]

My Commission expires

RUTH A. SMITH  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1989

### Consent and Agreement

The undersigned, the lessee ("Lessee") named in the Lease ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as the Lease Assignment is effective:

(1) it will pay all Payments (as defined in Section 1 of the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease directly to The Connecticut Bank and Trust Company, National Association, as Agent ("Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds to The Connecticut Bank and Trust Company, National Association, Hartford, Connecticut, for credit to its Corporate Trust Department's Account No. 000-089-2 with advice that the funds are "RE: OAK 10/15/86": (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor and that the Lessee will not assert against the Vendor any claim or defense the Lessee may have against the Lessor under the Lease;

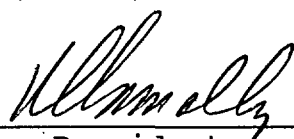
(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said state.

OAKWAY, INC.,

by

  
E. V. President

[Corporate Seal]

Attest:

  
Secretary

The foregoing Consent and Agreement is hereby  
accepted, as of the 15th day of October 1986.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION, as  
Agent,

by

\_\_\_\_\_  
Authorized Officer



OAKWAY, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

The foregoing Consent and Agreement is hereby  
accepted, as of the 15th day of October 1986.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION, as  
Agent,

by

  
\_\_\_\_\_  
Authorized Officer